REMARKS

In the Office Action, claims 1-12 were rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 6,697,103 to Femandez (hereinafter "Fernandez").

Claim 4 has been amended solely to correct a typographical error. Claims 1-12 are presently pending in this application, and claims 1 and 6 are independent claims. Applicant respectfully submits that the presently pending claims are in condition for allowance for the reasons discussed below.

Rejection of Claims 1-12 under 35 U.S.C. 102(e)

On page 2 of the Office Action, the Examiner rejected claims 1-12 under 35 U.S.C. §102(e) as being anticipated by Fernandez. "A claim is anticipated [under 35 U.S.C. § 102] only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." Verdegaal Bros. v. Union Oil Co. of California, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987). See M.P.E.P. § 2131. Applicant respectfully submits that Fernandez does not disclose every claim limitation recited in the presently pending claims.

A.   Independent Claim 1

The Examiner relies on Fernandez to reject claim 1 under 35 U.S.C. §102(e) (pages 2-3 of the Office Action). Claim 1 is as follows:

> 1.   A method of indicating the status of a Digital Subscriber (DSL) demonstration kiosk to a centrally located monitoring station, the method comprising the steps of:
> establishing a DSL demonstration kiosk at a location accessible for users to sample the services offered by a DSL connection;
> connecting the DSL demonstration kiosk to the centrally located monitoring station, said centrally located monitoring station comprising a server computer and a ping utility;
> transmitting to the centrally located monitoring station an Internet Protocol (IP) address assigned to the DSL demonstration kiosk; and
> periodically transmitting a first message to the centrally located monitoring station, the first message indicative of the status of the DSL demonstration kiosk. (Emphasis added.)

Applicant respectfully submits that Fernandez does not disclose a DSL demonstration kiosk as recited in claim 1 for the following reasons. The term "demonstration" is not even

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mentioned in Fernandez. Moreover, the only mention of DSL in Fernandez relates to a possible use of a DSL connection to connect various network elements (col. 17, lines 14-21 of Fernandez), which statement is in no way a disclosure of a DSL demonstration kiosk, especially when the DSL demonstration kiosk is considered in the context of the entire claim. Applicant's specification explains, "The monitoring of these kiosks...should be understood as an independent activity unrelated to the provisioning of the DSL service itself" (page 6, lines 21-22 of Applicant's specification).

Further, the only mention of a kiosk in Fernandez has nothing to do with a DSL demonstration kiosk. Fernandez merely states that yellow page listings for vendors or products may possibly be provided in a kiosk (col. 15, lines 23-29 of Fernandez). This brief statement in Fernandez simply does not disclose a DSL demonstration kiosk, especially when the statement in Fernandez is considered in its context of monitoring movements of potential buyers relative to mobile resources as stated at col. 15, lines 18-29 of Fernandez. The monitoring of movements of potential buyers is entirely different from the claimed method of indicating the status of a DSL demonstration kiosk to a centrally located monitoring station. Thus, Fernandez does not disclose a DSL demonstration kiosk.

Fernandez lacks other limitations of claim 1 as well. Claim 1 explicitly recites the step of "establishing a DSL demonstration kiosk at a location accessible for users to sample the services offered by a DSL connection" (emphasis added). No such teaching is found anywhere in Fernandez.

Based on the foregoing, Fernandez fails to anticipate claim 1 because Fernandez does not disclose every limitation recited in claim 1. Therefore, Applicant respectfully requests that the Examiner withdraw the rejection of claim 1, and it is submitted that claim 1 and its dependent claims (claims 2-5) are in condition for allowance.

B.   Independent Claim 6

The Examiner relies on Fernandez to reject independent claim 6 under 35 U.S.C. §102(e) (pages 2-3 of the Office Action). Claim 6 recites:

> 6.   A method of monitoring a DSL demonstration kiosk from a centrally located monitoring station, the method comprising the steps of:
> establishing a connection with the DSL demonstration kiosk;
> periodically transmitting a ping signal to the DSL demonstration kiosk;

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waiting to receive a first message at a predetermined time, said
message indicative of whether the DSL demonstration kiosk is in service;
        if the first message is not received at the predetermined time, then
recording the time at which the failure of the arrival of the first message is
detected; and
        generating an alerting message. (Emphasis added).

Applicant respectfully submits that Fernandez does not disclose every element recited
in claim 6. The arguments above for claim 1 with respect to the limitation of a DSL
demonstration kiosk are equally applicable to claim 6.

Moreover, claim 6 recites additional subject matter that is not disclosed in Fernandez.
For example, claim 6 recites the claim limitation of recording a time at which a failure of
arrival of a first message is detected. The Examiner asserts that col. 15, lines 32-40 and col.
19, lines 15-25 of Fernandez disclose this claim limitation. However, these sections of
Fernandez do not disclose any recording of a time that a failed arrival message is detected. In
contrast, Fernandez's disclosure is limited to a ping test for recognizing current network
participants and a removal of any unresponsive or defective sites from a database until the
problem can be resolved (col. 19, lines 18-26). This is not in any way a disclosure of
recording a time at which a failure of arrival of a first message is detected. Therefore,
Applicant respectfully requests that the Examiner withdraw the rejection of claim 6, and it is
respectfully submitted that claim 6 and its dependent claims (claims 7-12) are in condition for
allowance.

C.   The Dependent Claims Recite Patentable Subject Matter

        The dependent claims (claims 2-5 and 7-12) are in condition for allowance as
claims depending from independent claims 1 and 6. Nevertheless, the dependent claims
independently recite patentable subject matter. Merely by way of example, claim 4 recites the
claim limitation of retransmitting the DSL demonstration kiosk's IP address upon a reboot of
the kiosk. The Examiner asserts that this claim limitation is inherently disclosed in
Fernandez based on Fernandez's alleged disclosure of testing to detect and correct defective
or unresponsive server sites (page 3 of the Office Action). The Examiner alleges that any
ping test will inherently cause a retransmission of the kiosk IP address upon resolution of a
detected problem (page 3). Applicant respectfully disagrees. "To establish inherency, the

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extrinsic evidence 'must make clear that the missing descriptive matter is necessarily present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill.' 'Inherency, however, may not be established by probabilities or possibilities. The mere fact that a certain thing may result from a given set of circumstances is not sufficient.'" In re Robertson, 49 USPQ2d 1949, 1950 (Fed. Cir. 1999) (citations omitted).

The claim limitation of retransmitting the DSL demonstration kiosk's IP address upon a reboot of the kiosk is not inherently disclosed in Fernandez for the following reasons. Firstly, not only does Fernandez fail to even mention the term "reboot," a reboot is not necessarily present in a resolution of a problem with a defective or unresponsive server site. There are many possible causes of such a problem that can be corrected without a reboot. Secondly, a retransmission of an IP address is not necessarily present in a ping test. A ping test typically involves transmitting a signal to a known address and waiting for a reply signal. The reply signal does not necessarily include an IP address. Because retransmitting the DSL demonstration kiosk's IP address upon a reboot of the kiosk is neither explicitly nor inherently disclosed in Fernandez, Applicant respectfully requests that the Examiner withdraw the rejection of claim 4, which is believed to be in condition for allowance.

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CONCLUSION

All rejections have been addressed. In view of the above, the presently pending claims are believed to be in condition for allowance. Accordingly, the Examiner is respectfully requested to pass this application to issue. It is believed that any fees associated with the filing of this paper are identified in an accompanying transmittal. However, if any additional fees are required, they may be charged to Deposit Account 07-2347. To the extent necessary, a petition for extension of time under 37 C.F.R. 1.136(a) is hereby made, the fee for which should be charged against the aforementioned account.

Respectfully submitted,

Dated: August 19, 2004   By _____

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